

Agency: Commerce, Community and Economic Development**Grants to Municipalities (AS 37.05.315)****Grant Recipient: Fairbanks North Star Borough****Project Title:**

Fairbanks North Star Borough - Ruth Barnett Hatchery Tourist and Cruise Passenger Facilities and Improvements

State Funding Requested: \$ 3,600,000**House District: 7 - D**

One-Time Need

Brief Project Description:

Tourism improvements at the Ruth Barnett Hatchery to facilitate visitor understanding of Alaska's ecosystems and fishery resources.

Funding Plan:**Total Cost of Project: \$3,600,000**Funding SecuredOther Pending RequestsAnticipated Future Need

Amount FY

Amount FY

Amount FY

There is no other funding needed

Detailed Project Description and Justification:

Would allow for a visitors and educational component to the Fairbanks Hatchery that is already under construction and full funding is included in the FY 09' budget. The design initially included this component, but was eliminated when the costs associated with the construction of the facility was too much to include the visitors center.

Project Timeline:

The visitor center funds will be used to coincide with the main hatchery

Entity Responsible for the Ongoing Operation and Maintenance of this Project:

Department of Fish & Game

Grant Recipient Contact Information:

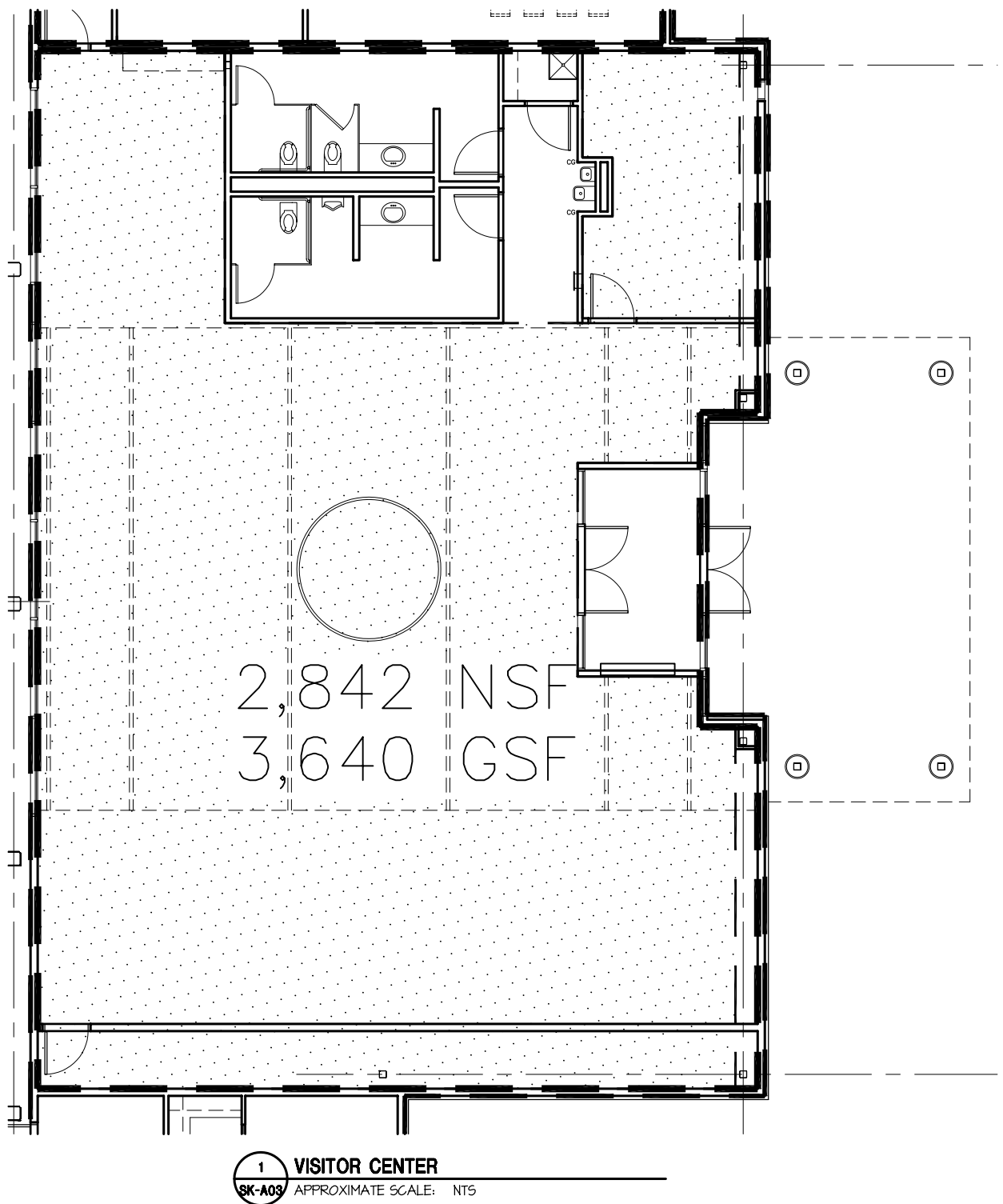
Contact Name: Mayor Jim Whitaker

Phone Number: 459-1000

Address: 809 Pioneer Road Fairbanks, AK 99701

Email:

Has this project been through a public review process at the local level and is it a community priority? ☒ Yes ☐ No



SCALE: AS SHOWN

LAND LEASE

The Fairbanks North Star Borough, Lessor, whose address is P.O. Box 71267, Fairbanks, Alaska 99707-1267, and The State of Alaska, Department of Fish and Game, the Lessee, whose address is P.O. Box 115526 Juneau, Alaska 99811-0024, enter into this lease of 18 pages, including a signature page, and agree as follows:

RECITALS

WHEREAS, Lessor is the owner of certain real property located in the Fairbanks Recording District, Fourth Judicial District, State of Alaska; and

WHEREAS, The Alaska Department of Fish and Game intends to construct, operate, and maintain a fish hatchery and informational and educational center hereinafter "Visitor Center" in the Fairbanks North Star Borough, and

WHEREAS, In recognition of the positive impact the operation of Lessee's Facility will have on the economic activity in the Interior; and

WHEREAS, The siting of the Facility in this location will provide an additional attraction to adjacent Borough recreation and convention facilities; and is an integral part of the Riverbend Concept Development and

WHEREAS, The Lessor desires to lease the below described property.

WHEREAS, The Lessee desires to lease the below described property.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein;

IT IS AGREED:

BASIC PROVISIONS

PREMISES

1. The Lessor leases to the Lessee and the Lessee leases from the Lessor, the following described property, called the "Premises", located in Government Lot 11, Section 9, Township 1S., Range 1W., Fairbanks Meridian, Fairbanks Recording District, Fourth Judicial District, Alaska:

Tract 2, of Hatchery Roe Subdivision, consisting of approximately 5.22 acres of land as shown on Page 16 of this lease

AUTHORIZED USES

2. Lessee will use the Premises for the following purposes:

Construction, operation, maintenance, and incidental activities related to a state operated fish hatchery, visitor center and related buildings, equipment, and facilities, (collectively referenced as "Hatchery Facilities"). The uses allowed would include, but not be limited to fish rearing, office and administrative support activities, visitor and interpretive areas, water wells, visitor and other public parking, shop and maintenance rooms, and fisheries related research. The visitor center will include a minimum of 2,800 square feet of net public assembly area contained within the primary hatchery structure.

TERM

3. The term of this lease is 30 years, beginning on the date of execution by the Lessor.

ANNUAL RENT

4. The total annual rental for the Premises will be \$1.00 per year paid in full at the time of execution by the Lessee.

GENERAL PROVISIONS

IMPROVEMENTS

5. The exterior of any buildings constructed on the Premises and the grounds visible to the public, both during the initial project and any subsequently approved additions must be reasonably neat, presentable, and compatible with its use and surroundings.

(A) Following initial construction of the Hatchery Facilities, before engaging in any construction/renovation of any improvements on the Premises which: (1) has a projected cost in excess of \$50,000 (a sum to be annually adjusted to account for inflation) and, (2) affects the appearance of the exterior of Lessee's buildings or the grounds visible to the public, Lessee must first obtain the written approval of Lessor. (This requirement does not apply to any construction, renovation, or work occurring inside the Hatchery Facilities.)

(B) Detailed drawings of the proposed development/renovation affecting the appearance of the building exterior, and the grounds visible to the public must be submitted to Lessor when completed. When appropriate, Lessee must submit architectural drawings showing front and side elevation views and floor plan of the proposed structure, materials to be used, dimensions, elevations, the location of all proposed utility lines, and any additional data requested by Lessor that is reasonably necessary to assess the project.

(C) Lessor will review and approve or disapprove the proposed outdoor construction/renovation plans. Approval will not be withheld except where Lessor demonstrates in writing the proposed construction does not comply with valid engineering principles, fire or building codes or the proposed construction is inconsistent with the purposes of this lease. If Lessor does not issue such written disapproval of the plans within 90 days of Lessee's submission, Lessor will be deemed to have approved them.

(D) Lessee will submit to Lessor copies of all applicable City, Borough, State, or Federal permits. Lessor reserves the right to inspect the premises for compliance with this provision and other provisions of the Lease at any time upon reasonable notice to Lessee.

6. The Lessee, within one hundred and twenty (120) days after completion of construction/renovation or placement of improvements upon the Premises will deliver to the Lessor two (2) printed copies and one electronic file of as-built drawings showing the location and dimensions of the improvements, giving bearings and distances to the established surveyed corners of the Premises. Furthermore, if the Lessee constructs underground improvements, the Lessee will appropriately mark the surface of the land with adequate surface markers.

7. In recognition of the fact Lessee may transfer the Hatchery Facilities to Lessor at the conclusion of the lease, Lessee agrees to provide Lessor with all as-builts, city permits, and other documents related to the construction, renovation, or similar work within the Facility at least 120 days prior to proposed transfer.

8. In addition to the above requirements, construction of the facility cannot begin until the necessary zoning permits are secured by the Lessee and the Title 17 subdivision plat of the premises is approved.

9. The Agreement to Special Limitations for Re-Zone 2007-011, signed by the Lessee's representative is incorporated herein by reference, and attached hereto on Page 17 of this Lease.

MAINTENANCE AND CONSTRUCTION

10. The Lessee will keep the Premises and improvements reasonably neat and presentable at the Lessee's own expense throughout the term of this lease. This requirement includes the maintenance of landscaping and pavement. Lessee's expenditures on maintenance are subject to budgetary appropriation.

11. At no cost to the Lessor, the Lessee will provide for all utilities, services, and maintenance (including snow removal) as is necessary to facilitate the Lessee's use of the Premises.

12. The Lessee will conduct external maintenance activities and snow removal on Premises in a reasonable manner. The Lessee further agrees to consult with Lessor's designated contact regarding maintenance and snow removal. If any snow is to be stored on site it will be in a location that will not cause ponding on any landscaping nor allow any ponding or drainage to go beyond the Premises boundaries to the Lessor's adjacent properties. Lessor agrees to do likewise with regard to Lessee's adjacent property.

RESPONSIBILITY UPON DAMAGE TO OR DESTRUCTION OF PROPERTY

13. In the event a building or improvement situated on the Premises is destroyed or damaged by fire or other casualty, Lessee will comply with one of the following conditions within one hundred and eighty (180) days of such destruction or damage (or within such other time period as is mutually agreed to in writing by Lessee and Lessor):

(A) Lessee may repair, rebuild, or otherwise reinstate the damaged improvement(s) in a good and substantial manner and in substantially the same form as it previously existed. In such event, the provisions addressing Lessor assessment of new construction or renovation in Section 5 above do not apply.

(B) Lessee may remove the damaged improvement(s). In this case Lessee must, at its cost and expense, restore the Premises to a reasonably clean, neat and presentable condition. Lessor will not unreasonably withhold determination as to Lessee's completion of restoration.

(C) Lessee may elect to terminate the Lease by performing each of the following:

1. Giving written notice to Lessor of its intention to terminate,
2. Removing the damaged improvement(s) and restoring the Leased Premises to the condition specified in (B), above)

DISPOSITION OF IMPROVEMENTS AND PERSONAL PROPERTY

14. Ownership of permanent improvements: Unless otherwise provided by this Lease, or any other written agreement between the Lessor and Lessee, permanent improvements on the Premises constructed, placed, or purchased by the Lessee remain the Lessee's property during the term of this Lease.

15. Disposition of personal property and permanent improvements:

(A) For the purpose of this provision the following definitions apply:

1. "permanent improvements" are all those physical structures permanently affixed to the ground by Lessee, for example, buildings and foundations, utility lines, pavement, water wells, sheds, etc.

2. "termination of the Lessee's occupancy" refers to the situation where the Lessor does not grant to the Lessee a new lease for the Premises after this Lease expires or a holdover tenancy under this Lease is terminated.

(B) This provision applies upon the termination of the Lessee's occupancy.

(C) Personal Property: Upon the termination of the Lessee's occupancy of the Premises, the disposition of all Lessee's owned personal property, including equipment on the Premises, will be one of the following:

1. The Lessee may remove the Lessee's personal property, at the Lessee's sole expense, within 120 days of the termination.

2. Subject to applicable statutes and regulations, Lessee may, with the concurrence of the Lessor, transfer all legal interest in the personal property to Lessor, or.

3. Should the Lessee not remove its personal property from the Premises within the time frame stated 15 C(1) above, or transfer legal interest to Lessor outlined in 15(C)2, above, the Lessor may elect to take possession and dispose of the Lessee's personal property at the sole cost and expense of the Lessee.

(D) Permanent Improvements:

1. Upon the termination of the Lessee's occupancy, the Lessee will have up to 120 days from the termination to either: a) remove Lessee owned permanent improvements and restore the Premises to a clean, neat and presentable condition as determined by the Lessor at the Lessee's sole cost and expense, or b) subject to applicable statutes and regulations and the parties' mutual agreement, Lessee may transfer all legal interest in and responsibilities for all improvements to Lessor.

2. If the Lessee does not remove the Lessee's permanent improvements or personal property from the Premises within the time required under this article or transfer them to Lessor as provided above, the permanent improvements and personal property will, upon written notice to the Lessee, be considered abandoned and the Lessor may sell, lease, demolish, dispose, or remove the permanent improvements or personal property for any purpose the Lessor determines is in the best interest of the Borough. The Lessee shall, within 30 days after the date of the Lessor's billing, reimburse the Lessor for any costs incurred by the Lessor, including administrative and legal costs in disposing of the permanent improvements or personal property and restoring the Premises. At the sole determination of the Lessor, the Lessor may choose to retain the permanent improvements or personal property, which were abandoned. If the Lessor chooses to retain the property, title of the abandoned property shall automatically vest to the Lessor.

(E) Extension: For good cause shown by the Lessee, the Lessor may grant a written extension of time for the removal of permanent improvements or personal property under this article.

SURVEY

16. At the Lessee's sole expense, Lessee will subdivide the Premises according to the Fairbanks North Star Borough Code of Ordinances, Title 17 (Subdivision), completed by a registered professional land surveyor, certified in the State of Alaska.

17. Throughout the Term of this Lease, and within one hundred and twenty (120) days following the construction of any new structures on the Premises, or alteration, addition, demolition or removal affecting an existing structure's "footprint" or exterior appearance on the premises, Lessee will deliver to Lessor an as-built survey of the Premises showing Lessee's new additions or changes. As-built surveys will be prepared by a registered Professional Land Surveyor or Professional Civil Engineer, certified in the State of Alaska.

18. Lessee will protect all survey monuments and accessories, such as witness corners, reference monuments, and bearing trees from disturbance during the life of the Lease. Lessee will re-establish in accordance with accepted survey practices and at Lessee's own expense, any damaged or destroyed monuments or markers.

CONDITION OF PREMISES

19. Lessor represents it has provided Lessee with: (1) a full written disclosure of all suspected releases known to the Borough of hazardous substance on the Premises and (2) all reports, analyses, and tests regarding investigation or remediation associated with such releases. The term "release" as used in this lease means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, migrating, leaching, dumping, or disposing into the environment. The term "hazardous substance" means any hazardous waste, substance, or material as defined by any applicable federal, state, or local statute or regulation. The Lessor makes no guarantees that on the date Lessee takes possession, the Premises shall be free of all hazardous substances and utility conflicts. However, Lessee is not responsible or liable for any pre-existing conditions, e.g., hazardous substance, on the Premises.

If in the course of its design and construction work, the Lessee finds conditions on the Premises that represent significant delays or additional costs to the project, the Lessee may either (1) remediate the condition if economically feasible as determined by the Lessee, or (2) terminate the lease without penalty and quit the property, taking reasonable steps to restore the Premises to a clean, neat and presentable condition in consultation with the Lessor. By choosing to remediate the condition, the Lessee does not infer or imply that the Lessee is legally responsible for the condition. In no event will the Lessor be liable to the Lessee, its agents, assignees or subcontractors for any slow downs or delays in construction or future operations, including any resulting costs and/or claims, as a result of environmental or physical conditions of the Premises not caused by the Lessor.

FUEL AND HAZARDOUS SUBSTANCES

20. Prior to the initial storage or use of any hazardous substance on the Premises, the Lessee must first inform the Borough in writing of the materials, their estimated quantities and storage procedures. The storage and use of all hazardous on the Premises must conform to all applicable federal, state, and local statutes or regulations.

21. In the event of a fuel or hazardous substance spill on the Premises, the Lessee will act immediately to contain the spill, promptly notify the Lessor, repair any damage, absorb and clean up the spill area, and restore the Premises to a condition reasonably satisfactory to the Lessor and otherwise comply with the applicable portions of federal, state, or local statutes or regulations.

22. No fuel may be stored on the Premises unless it is stored in a double walled tank sufficient to hold at least 110% of the tank's rated capacity.

ENVIRONMENTAL

23. If contamination of the Premises or other properties occurs as a result of the release of hazardous substances from the Lessee's operations on the Premises, the Lessee will respond as mandated by law. Such response may include investigation of site conditions or any cleanup, remediation, removal, or restorative work required by any federal, state, or local statutes or regulations. This requirement shall survive the term of the lease.

24. Lessee will provide Lessor all investigative data, test results, reports, and any other information gathered or analyzed as part of, or in relation to, any environmental site assessment, characterization or audit which Lessee performs, or causes to be performed, on the Premises after the starting date of this lease. The Lessee will submit the data, results, reports or information to the Lessor within 60 days following the date on which it becomes available to the Lessee.

25. Correspondingly, if contamination of the Premises occurs as a result of conditions or activities on or off the Premises for which Lessor is responsible, then Lessor, and not Lessee, will provide an environmental response consistent with the provisions contained in paragraphs 23 and 24 above.

INSURANCE

26. General Liability: The parties acknowledge that Lessee is a governmental entity that has a comprehensive program of self-insuring all risks of general liability for part or all of Lessee's risks of loss or damage. Therefore, the insurance requirements of this section will be applicable to the Lessee in the event the Lessee elects to obtain such insurance, but may, in the alternative be satisfied through an equivalent self-insurance program satisfactory to the Borough. The Lessee will provide evidence of this program to the Borough. The Lessee will require similar coverage of its subcontractors, agents, or operators, and the Lessor will be identified as an additional insured on the commercial general liability policies of the subcontractors, agents, or operators.

27. Insurance Requirements:

(A) Subject to the qualification set forth in the preceding paragraph, during the term of this Lease the Lessee, will obtain and maintain in force the insurance coverage specified in this section with an insurance company rated "Excellent" or "Superior" by A. M. Best Company or specifically approved by Lessor's risk manager.

1. Commercial General Liability coverage written on an occurrence basis with limits of not less than \$1,000,000 per occurrence.

2. Automobile Liability coverage with a combined single limit of not less than \$1,000,000 per occurrence applying to all owned, non-owned, or hired vehicles used in conjunction with this contract.

3. Workers' Compensation coverage including Employer's Liability with limits of not less than \$100,000 each accident, \$500,000 disease – policy limit, and \$100,000 disease – each employee.

(B) The insurer will send Lessor thirty (30) days written notice before it cancels, refuses to renew, or materially alters coverage required by this Lease. Lessee will assure the insurance policies, if any, include a provision requiring this prior notice.

(C) During the Lease Term, the Lessee will add and maintain the Lessor as an additional insured in the Lessee's commercial general liability policy. This policy will provide primary coverage for the Lessor, and it will provide that the policy treats each additional insured as though the insurer had issued separate policies.

(D) Before providing any services under this Lease, the Lessee will provide the Lessor with a certificate of insurance showing the coverage specified in this section in a form acceptable to the Lessor.

(E) The aforementioned insurance requirements can be met through any combination of primary and excess/umbrella policies that fulfill the stipulated coverage as cited above.

HOLDING OVER

28. If the Lessee holds over and remains in possession of the Premises after the expiration of this lease, the holding over will not operate as an extension of the term of this lease but only creates a tenancy from month to month, regardless of any rent payments accepted by the Lessor. The Lessee's obligations for performance under this lease will continue until the month to month tenancy is terminated by the Lessor. The Lessor may terminate the tenancy at any time by giving the Lessee at least thirty (30) days prior written notice.

ASSIGNMENT OR SUBLEASE

29. The rights and obligations granted and assumed by Lessee may not be assigned, delegated, sublet, encumbered or otherwise transferred except upon prior written notice to, and written approval of Lessor, which approval shall not be unreasonably withheld. Lessee will assume any and all reasonable costs incurred by Lessor in reasonably evaluating the background, skills, financial position and references of the Lessee's prospective assignee. All covenants and provisions in this lease extend to and bind the legal representatives, successors, and assigns of the parties.

CONDEMNATION

30. In the event the whole or any part of the Premises is condemned by a public entity in the lawful exercise of its power of eminent domain, this Lease shall terminate as to the part so condemned. The date of such termination shall be the effective date of possession of the whole or part of the Premises by the condemning public entity. If only a part of the Premises is condemned and, the Lessor and Lessee mutually agree that the condemnation of that part does not substantially impair the capacity of the remainder to be used for the purposes allowed in this Lease, Lessor and Lessee shall continue to be bound by this Lease. If, Lessee believes the condemnation of a part of the Premises does substantially impair the capacity of the remainder to be used for the purposes in this Lease, Lessee may:

(A) Terminate this Lease under the provisions of Section 31, and thereby be absolved of all obligations there under which have not accrued as of the date of possession by the condemning public entity; or

(B) Continue to occupy the remaining Property and thereby continue to be bound by this Lease.

Lessor shall be entitled to, and shall receive, all compensation related to the condemnation of all or a part of the Premises by the exercise of eminent domain, provided, however, that Lessee shall be entitled to and shall receive that portion of the compensation representing the value of Lessee's constructed Improvements.

CANCELLATION BY LESSEE

31. The Lessee may cancel this lease by giving the Lessor at least one hundred eighty (180) days advance written notice, provided, however, that if the Lessee's interest is encumbered by a mortgage or assignment for security, or other financial security obligation, such cancellation will not be effective without the written consent of the mortgagee or assignee delivered to the Lessor. Upon acceptance of the notice the provisions of this Lease dealing with the disposition of the Lessee's improvements upon termination apply.

LESSEE'S SITE CONTROL

32. Notwithstanding any other provision of this lease, no term or provision shall be interpreted to provide the Lessee fewer controls than required by 50 CFR 80.20 as determined by paragraph 51.

VACATION

33. At the expiration, cancellation or termination of this lease, the Lessee must peaceably and quietly vacate the Premises and return possession to the Lessor. The Premises must be left in a clean, neat, and presentable condition to the reasonable satisfaction of the Lessor.

RESERVATION OF RIGHTS

34. The Lessor specifically reserves the right to grant to others the easement rights and privileges not specifically and exclusively granted to the Lessee. Rights reasonably expected to fall under this provision are those related to utility services, street right of way modifications or temporary construction easements related to utility or street construction. Any easement rights or uses granted by the Lessor will not unreasonably interfere with the Lessee's use and enjoyment of the Premises. The Lessee has no easements rights or privileges, express or implied, other than those specifically granted by this lease. However, Lessor will grant Lessee any easement rights or privileges reasonably necessary for construction or operation of the Hatchery Facilities.

DISCRIMINATION

35. The Lessee covenants and agrees that discrimination on the grounds of race, color, religion, national origin, ancestry, age, or sex will not be permitted against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or state law. The Lessee recognizes the right of the Lessor to take any action necessary to enforce this covenant, including actions required pursuant to any federal or state law.

LAWS AND TAXES

36. At no expense to the Lessor, the Lessee will conduct all activities authorized by this lease for which it is responsible in compliance with all federal, state, and local laws, ordinances, rules and regulations now or hereafter in force which apply to the activities authorized herein or to the use, care, operation, maintenance, and protection of the Premises, including but not limited to matters of health, safety, sanitation, and pollution. The Lessee must obtain all necessary licenses and permits pay all taxes and special assessments lawfully imposed upon the Premises, and pay any other fees and charges assessed under applicable public statutes or ordinances.

37. In any disputes between the parties, the laws of the State of Alaska will govern and any lawsuit must be brought in the courts of the State of Alaska, Fourth Judicial District, at Fairbanks, Alaska.

38. Lessee agrees to notify the Borough of any claim, demand, or lawsuit arising out of Lessee's occupation or use of the Premises. Lessee will not unreasonably withhold its cooperation concerning Lessor's investigation into such matter.

39. The Lessor makes no specific warranties, express or implied, concerning the title or condition of the property, including survey, access, or suitability for any use, including those uses authorized by this lease. The Lessee takes the Premises subject to any and all of the covenants, terms, and conditions affecting the Lessor's title to the Premises.

LIENS

40. Lessee will pay all costs duly owing for labor and materials arising out of any construction or improvements by Lessee on the Premises. It will not commit any act whereby the Premises become subject to lien or claims against title other than mortgages, bonds, other financial security obligations, or a statutory lien for nondelinquent real property tax or assessments.

NO WAIVER

41. The failure of either party to insist in any one or more instances upon the strict performance by the other of any provision or covenant in this lease may not be considered as a waiver or relinquishment for the future, but the provision or covenant will continue in full force. The waiver by either party of any provision or covenant in this lease cannot be enforced or be relied upon unless the waiver is in writing signed on behalf of the other.

MODIFICATION/ AMENDMENT

42. This Lease may be modified or amended from time to time by mutual consent of both parties. No modification or amendment will be effective unless it is in writing and signed by both parties.

VALIDITY OF PARTS

43. If any provision or covenant of this lease is declared to be invalid by a court of competent jurisdiction, the remaining covenants and provisions will continue in full force.

INTERRELATIONSHIP OF PROVISIONS

44. The basic provisions, general provisions, special covenants, supplements, addenda, and drawings are essential parts of this lease and are intended to be cooperative, to provide for the use of the Premises, and to describe the respective rights and obligations of the parties to this lease. In case of a discrepancy, figured dimensions govern over scaled dimensions unless obviously incorrect. Special covenants govern over basic provisions, both of which govern over general provisions.

NATURAL DISASTERS

45. In the event any cause which is not due to the fault or negligence of either Lessee or Lessor renders the Premises unusable and makes the performance of this lease impossible, this lease may be terminated by either party upon written notice to the other party. Causes include but are not restricted to acts of God or the public enemy, acts of the United States, fires, floods, epidemics, quarantine restrictions, or strikes.

INTEGRATION AND MERGER

46. This lease sets forth all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Premises whether oral or written. No modification or amendment of this lease is effective unless in writing and signed by both the parties.

NATIONAL EMERGENCY

47. In case of any national emergency declared by the federal government, neither party may hold the other liable for any inability to perform any part of this lease as a result of the national emergency.

APPROVAL BY LESSOR

48. Any approvals required of the Lessor by this lease will not be unreasonably withheld.

INGRESS, EGRESS

49. The Lessor reserves the right of ingress to and egress from the Premises and the right to enter any part of the Premises, including buildings thereon, for the purpose of inspection upon reasonable notice. Except in the case of an emergency, all inspections will be coordinated with the Lessee in order to minimize interference with the Lessee's activities on the Premises.

APPROPRIATIONS

50. Lessee's and Lessor's performance of obligations concerning this lease is dependent upon and subject to annual appropriation. Neither the Lessee nor the Lessor shall be liable to the other party if their respective funding body fails to appropriate funds necessary to fulfill their respective obligations.

DISPUTE RESOLUTION

51. In the event Lessor or Lessee allegedly fails to comply with or perform any duty, condition, covenant, or provision of the Lease, the other party may serve written notice seeking curative action within a period of not less than 45 days. However, if the notice recipient demonstrates: (1) successful cure will require more than 45 days and (2) it is making a good faith effort to achieve the requested cure, the party issuing notice will not unreasonably deny a request for a reasonable extension of time in which to effect the cure.

(A) If the notice recipient fails to effect cure by the prescribed deadline, the parties will select a mutually agreeable mediator within 10 days of the expired deadline. Within 30 days of the selection, or as soon thereafter as possible, the mediator will convene a mediation – the purpose of which will be to cause the parties to reach a mutually agreeable resolution to their dispute.

(B) If mediation proves unsuccessful after convening for a reasonable duration, Lessor or Lessee may bring an action in superior court to enforce the Lease. The prevailing party in any such litigation is entitled to recover reasonable actual attorneys' fees and costs.

(C) Nothing in this section limits the ability of the Fairbanks North Star Borough, acting in its local government capacity, to enforce the special zoning limitations agreed upon by the Lessee or any other zoning or local ordinance violations as allowed for by law.

ENTIRE AGREEMENT:

52. This Lease and any other documents referred to herein constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. In the event of any conflict between the terms of this Lease and any document referred to herein, this Lease will prevail.

EXECUTION BY LESSOR

53. This Lease is not binding on either party unless authorized by a Resolution of the Fairbanks North Star Borough Assembly and signed by the Borough Mayor.

NOTICES

54. Any notices to be given pursuant to the provisions of this Lease or any law will be either hand delivered or sent certified mail, return receipt requested, to the parties at the addresses shown below or such other address as Lessor or Lessee may have designated in writing. All notices referred to in this Lease will be deemed given five (5) days after deposit in the US mail, first class postage affixed.

Lessor:

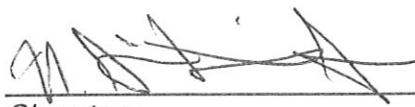
Fairbanks North Star Borough
Department of Land Management
P.O. Box 71267
Fairbanks, Alaska 99707-1267

Lessee:

State of Alaska
Department of Fish and Game
P.O. Box 115526
Juneau Alaska 99811-0024

IN WITNESS WHEREOF, the parties have executed this Lease to be effective the day and year first above written.

LESSOR:

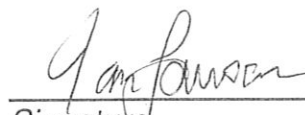


Signature Date: 5-11-07

Jim Whitaker, Mayor

Fairbanks North Star Borough


LESSEE:



Signature Date: 5/17/07

Tom Lawson, Director ADF&G
Administration
State of Alaska

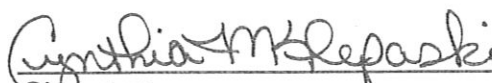
ATTEST:



Signature Date: 5-11-07

Mona Lisa Drexler, CMC
Municipal Borough Clerk

APPROVED:



Signature Date: 5-11-07

for René Broker
Borough Attorney



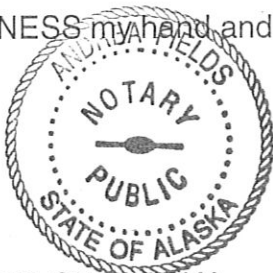
(Borough Seal)

ACKNOWLEDGEMENTS

STATE OF ALASKA)
): ss
FOURTH JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 11th day of, May, 2007, before me, the undersigned Notary Public, in and for the State of Alaska, duly commissioned and sworn as such, personally appeared to me Jim Whitaker, Mayor, Fairbanks North Star Borough, a municipal corporation of the State of Alaska, and who acknowledged to me that he executed the foregoing document on behalf of said corporation for the uses and purposes stated therein.

WITNESS my hand and official seal the day and year herein and above written.



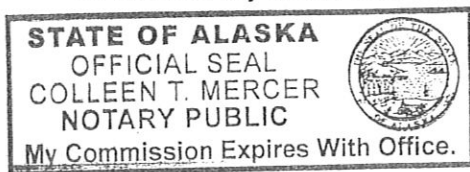
Andrea Fields

Notary Public in and for Alaska
My Commission Expires: 4-26-09

STATE OF ALASKA)
): ss
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 17 day of, May, 2007, before me, the undersigned Notary Public, in and for the State of Alaska, duly commissioned and sworn as such, personally appeared to me Thomas Lawson, Director of Administration, Alaska Department of Fish and Game, a Department organized and existing in the State of Alaska, and who acknowledged to me that he executed the foregoing document on behalf of the State of Alaska for the uses and purposes stated therein.

WITNESS my hand and official seal the day and year herein and above written.



Colleen Mercer

Notary Public in and for Alaska
My Commission Expires: w/office

AGREEMENT TO SPECIAL LIMITATIONS

REZONE: RZ2007-011

ORDINANCE NUMBER Ord. No. 2006-

PROPERTY OWNER: Fairbanks North Star Borough
P O Box 71267
Fairbanks, Alaska 99707

APPLICANT: Alaska Department of Fish and Game
& Transportation and Public Facilities; &
Fairbanks North Star Borough


DESCRIPTION OF PROPERTY:

Southeast portion of TL-904, Section 09, Township 1 South, Range 1 West,
shown as proposed Lot 02 Hatchery Roe Subdivision on Figure 13

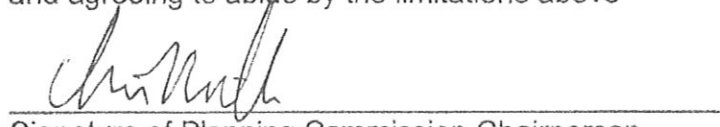
SPECIAL LIMITATIONS:

1. Use of the property is limited to a fish hatchery of no less than 40,800 sf and no more than 63,600 sf. total gross size. Accessory uses may include educational/research activities, and other similar and compatible uses as determined by the Director of Community Planning.
2. Use shall include a Visitor Center no less than 2,800 sf total net size (as defined by the International Building Code) contained within the primary structure.
3. Use shall include no more than 1 dwelling unit contained within the primary structure.
4. Building setbacks shall be no less than those indicated as minimums in Figure 3 of the application narrative.
5. Building orientation shall be front facing east.
6. Landscaping shall be similar to that shown in Figure 8, 9, 11 and 12 and include all areas shown on Figure 9 of the application narrative. The development shall include twice the amount of landscaping required for a commercial use by the City of Fairbanks Landscape Ordinance #5639. Required landscaping shall be increased to include street parking lot screening, perimeter parking lot screening and interior parking lot screening. Required deciduous trees shall be a minimum of 2" in diameter, measured 6" from ground level, evergreen trees shall be a minimum of 6' in height, and shrubs shall be a minimum of 20" in height. All landscaping shall be maintained thereafter. Berms and decorative fences shall not be substituted for required landscaping. (In the event an inconsistency between City of Fairbanks landscaping ordinances and the subject special limitation exist, the more restrictive requirements shall be applied).

7. A minimum of 40 parking spaces shall be provided. Bus/RV parking shall remain oriented to the north of the structure away from residential dwellings.
8. The visitor center shall include:
 - a. 10' diameter cylindrical aquarium similar to that shown in Figure 7.
 - b. Large visitor viewing area similar in size and capacity to those shown in Figure 7.
 - c. A large interactive electronic flat screen display showing information on watersheds, salmon migrations, spawning locations, use of propagated fish in area lakes, and sport fishing opportunities.
9. Exterior amenities shall include a minimum of two picnic tables and two pedestal mounted barbeque grills for use by the public and similar to the public use areas shown in Figure 8.
10. All noise mitigating actions outlined in the application narrative shall be implemented.
11. Use of aesthetically pleasing architectural elements and discontinuous exterior wall finishes shall be incorporated into the exterior design which dispels the industrial appearance of the structure. (Uninterrupted metal panel systems without texture or building footprint relief will not be considered consistent with this limitation.) *
12. Discharge of effluent into the Chena River shall be in accordance with ADEC, EPA and ADNR permits.
13. Dumpsters shall be located as shown on the approved site plan and screened from view. Waste generated onsite shall be disposed of weekly. Fish waste or carcasses shall not be disposed of in dumpsters.
14. Primary loading areas/docks shall be located to the back (western) side of the building with two additional secondary loading docks located on the Hilton Street side of the building. Buffer landscaping required by the City of Fairbanks Landscaping Ordinances shall be provided on the south side of the property and shall be designed to screen views of secondary loading docks and minimize noise impacts to neighboring residential development.
15. Commercial vehicles with back up warning devices shall be limited to operation onsite between the hours of 6:00 a.m. and 10:00 p.m.
16. Lighting shall be designed to prevent glare on adjacent residential properties and to minimize impacts on the surrounding neighborhood.


Signature of property applicant acknowledging
and agreeing to abide by the limitations above


Date


Signature of Planning Commission Chairperson


Date